

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALAN T. BROOKS,	§
	§ No. 735, 2009
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 86002026DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 16, 2010

Decided: June 2, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 2nd day of June 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Alan T. Brooks, filed an appeal from the Superior Court’s December 14, 2009 order adopting the Commissioner’s amended report dated October 23, 2009, which recommended that Brooks’ fourth postconviction motion pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

(2) In March 1987, Brooks was found guilty by a Superior Court jury of Murder in the First Degree, Possession of a Deadly Weapon During the

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

Commission of a Felony, Attempted Robbery in the First Degree, Robbery in the First Degree, Kidnapping in the Second Degree, and two counts of Conspiracy in the Second Degree. He was sentenced to a life term without the possibility of parole on the murder conviction and to a total of 52 years of Level V incarceration on the remaining convictions. Brooks' convictions were affirmed by this Court on direct appeal.²

(3) In Brooks' appeal from the Superior Court's denial of his postconviction motion, he claims that a) the State committed a *Brady* violation by failing to disclose an agreement for leniency with a witness for the State; and b) the Superior Court failed to schedule an evidentiary hearing to consider his claim. Brooks concedes that his claim of a *Brady* violation is time and procedurally barred, but argues that the merits of the claim should be considered under the "fundamental fairness" exception of Rule 61(i)(5).

(4) Under *Brady v. Maryland*, 373 U.S. 83 (1963), it is a violation of the defendant's due process rights for the prosecution to withhold evidence favorable to him. There are three components of a true *Brady* violation: the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; the evidence must have been suppressed by the State; and prejudice

² *Skinner, et al. v. State*, 575 A.2d 1108 (Del. 1990).

must have resulted.³ In order to avoid Rule 61's time and procedural bars under Rule 61(i)(5), the movant must demonstrate "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermines the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction." This exception is a narrow one that has been applied only in limited circumstances, such as when the right relied upon has been recognized for the first time after the direct appeal.⁴

(5) Brooks has failed to demonstrate that he is entitled to relief pursuant to Rule 61(i)(5). His allegation of a deal between the State and the witness amounts to no more than speculation and does not rise to the level of proof required to demonstrate a constitutional violation that undermines the validity of his conviction.⁵ Moreover, Brooks has not demonstrated why he failed to assert this claim previously, either on direct appeal or in his three previous postconviction motions. Under these circumstances, we find no merit to Brooks' claim.

(6) Brooks also claims that the Superior Court should have scheduled an evidentiary hearing to review material in the Attorney General's files that might attack the credibility of the State's witness. It is within the discretion of the Superior Court to determine whether an evidentiary hearing is required in

³ *Atkinson v. State*, 778 A.2d 1058, 1063 (Del. 2001).

⁴ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

⁵ *Id.*

connection with a postconviction motion.⁶ Given the tenuousness of Brooks' claim, we find no abuse of discretion on the part of the Superior Court in denying Brooks' request for an evidentiary hearing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁶ Super. Ct. Crim. R. 61(h)(1) and (3).